IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4141 OF 1995

M/s. Great Net Industry & Anr. ..Petitioners

Vs.

Shri A.M. Prachak and anr. ..Respondents

Mr. K.S. Bapat i/by M/s. Harish Mehta and Co. for petitioners.

Mr. Indrajeet Kulkarni for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : December 4, 10 & 11, 2007.

ORAL JUDGMENT:

1. This petition filed under Article 227 of the Constitution arises from the Judgment and Order dated 31/7/1995 rendered by the Industrial Court at Thane in Complaint (ULP) No. 95 of 1985. The said complaint was filed by the present respondent no.1 on his behalf and on behalf of other employees challenging the notice of lock-out dated 17/12/1980. The complaint was filed under Section 28(1) read Item Nos.1 and 6 of Schedule II and Item Nos.9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions &

Prevention of Unfair Labour Practices Act, 1971 (for short the Act). The Industrial Court, at the first instance, by the impugned judgment gave a declaration that the lock-out effected on 28/12/1980 by the present petitioners as per the notice dated 17/12/1980 was illegal and consequently it directed the petitioners to lift the lock-out within 48 hours from 31/7/1995. By the subsequent order dated 14/8/1995 the court noted that the order dated 31/7/1995 was stayed till 14/8/1995 and, therefore, stay was lifted and further 48 hours time was granted to lift the lock-out upto 4 p.m. of 16/8/1995 and report compliance.

2. Petitioner No.1 is a partnership firm and petitioner no.2 is one of its partner. Petitioner No.1 was at the relevant time engaged in the business of manufacturing of wire netting. Subsequently, the factory was closed and Court Receiver came to be appointed in Regular Civil Suit No. 834 of 1988. The Court Receiver has been impleaded as respondent No.1A. The other partner was Shri S.J. Ashar who died on 5/4/1994. Respondent Nos.1B, 1C, 1D and 1E are the LRs of Shri S.J. Ashar who was one of the partners of

petitioner no.1 and who died on 5/4/1994. Respondent No.2 is not a necessary party and he stands deleted forthwith. Respondent No.1 is the original complainant. It is the case of the petitioners that on 26/11/1980 the Secretary of Engineering workers Union paid a visit to the petitioners' factory and the said meeting was attended by all the workmen. However, after the meeting was over they did not report for duty and resorted to an abrupt action of tool down strike. Inspite of persuasion and notices issued on 26/11/1980, 27/11/1980 and 19/11/1980 tool down strike was not withdrawn and workmen started indulging in the act of coercion like shouting of slogans, using abusive language against the partners and company officials and in front of the residences of the partners. It is alleged that on 8/10/1980 some workmen assaulted the watchman who was on duty and another watchman was dragged out and assaulted on the same day for which the police complaint was lodged. As the management was not successful in restoring normalicy solely on account of the alleged illegal activities of the workmen, the notice of lock-out was issued on 17/12/1980 and it was displayed on the notice board of the factory for the information of the

workmen. Simultaneously, the notice for suspension of operations was also issued and the operations came to be suspended with immediate effect. The lock-out commenced on 28/12/1980. For the first time, the lock-out notice was challenged by filing Complaint (ULP) No. 95 of 1985 on 29/3/1985 i.e. almost after four years and four months.

2. It appears, in the said complaint an application at Exh.U-2 was filed under Section 30(2) of the Act for interim relief and on the same day the following ex parte injunction order was passed:-

> "Read affidavit. Heard Shri Raju. Ad-interim injunction is issued against the respondents restraining them from removing or transferring or selling plant and machinery until further orders. Issue show cause notice, returnable on 21/6/1985."

. The Company had filed an application at Exh.C-2 praying for time to hear the application at Exh.U-2 and the Industrial Court passed the following order on the said application:-

"Heard advocates. Workers are ready to give undertaking. Respondent to give say on 19/12/1985."

. Thereafter the Company moved applications at Exhs.C-5, C-6, C-7 and C-8 and pointed out that negotiations were going on with the Maharashtra Electricity Board for restoring the power supply to the factory as same was disconnected after the lockout was effected. The court had granted time. But again when the application at Exh.C-9 was filed by the Company seeking time, two months time was granted by the Court. The company filed yet another application at C-10 and prayed for further two months time and while rejecting the said application, the Industrial Court passed following order on 11/3/1987:-

"One month's time i.e. upto 10/4/1987 is granted for restarting the factory. If the Company fails to do so on or before 10/4/1987 they should pay 50% wages to the workers for 10 days and further full wages."

. Finally the application at Exh.U-2 was allowed by the Industrial Court by its order dated 13/4/1992 and the above stated orders passed below Exh.U-2 ex parte and the order on Exh.C-10 were confirmed. The company, therefore, approached this court and filed Writ Petition No. 3940 of 1992 and on 15/9/1992 both these orders were stayed while granting Rule by this Court. Finally Complaint (ULP) No. 95 of 1985 was decided by the Industrial Court on 31/7/1995 by passing the following operative order:-

> "It is hereby declared that the lockout effected on 28/12/1980 by the Respondents till today vide notice of lockout dated 17/12/1980 is absolutely illegal and the Respondents are directed to lift up lockout within 48 hours from the date of this order and report to the Court accordingly."

3. On the application at Exh. CA-12 filed by the Company the above stated order dated 31/7/1995 was stayed till 12/8/1995 and it was further stayed till 14/8/1995. However, on 14/8/1995 the stay was vacated and the Industrial Court directed the respondents i.e.

the present petitioners to lift the lockout upto 4 p.m. on 16/8/1995 and report compliance thereof. The court also made it clear that it would issue necessary declaration and directions after 16/8/1995. The instant petition has been presented before this court on or about 28/8/1995 and Mr. Bapat the learned counsel for the petitioner fairly conceded that the lockout was not lifted when the petition was filed before this court and as per him this was on account of the fact that Court Receiver had been appointed in the meanwhile by the learned 7th Addl. District Judge at Thane on 23/6/1992 while allowing Misc. Civil Appeal Nos.157 and 197 of 1989 by a common judgment and these appeals had arisen from the orders passed below Exhs.5 and 7 in Civil Suit No. 834 of 1988. The property mentioned in List "A" and List "C" was directed to be taken over by the Court Receiver for supervision and its management. Property in List "A" consisted of piece of land admeasuring 5000 sq. yards bearing Survey Nos.412/2-Part and 422/2-Part, having super structures of a factory shed and its building and godown. Whereas the property in List "C" was piece of land admeasuring 18,500 sq. yards bearing Survey Nos.484-Part, 422/2 Part, 412/2 and 428-Part

being free hold land with residential quarters.

4. Though the complaint was filed under Section 28 read with Items 1 and 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act, the learned Member of the Industrial Court by following the law laid down by this Court (DB) in the case of Maharashtra General Kamgar Union & Ors. vs. Balkrishna Pen Pvt. Ltd. and Ors. **[1987 II CLR 374]** treated the complaint as an application under Section 25(2) of the Act and proceeded to decide the issue of legality of the lockout commenced by the petitioners with effect from 28/12/1980. After considering the rival submissions and also the evidence adduced before it, the Industrial Court held that,

(a) the lockout was not proceeded by a notice of 14 days;

(b) the notice required was not given in form "J" under Rule 23 of the M.R.T.U. & P.U.L.P. Rules 1975; and

(c) the notice did not meet the requirements

of Rule 54 of the Labour Court (Practice and Procedure) Rules 1975.

The Industrial court also held that the notice of lockout was not marked and sent to the concerned statutory authorities.

5. On the first point of notice of 14 days, Mr.Bapat the learned counsel for the petitioners referred to the decisions of this court (DB) in the case of the Premier Automobiles Ltd. and ors. vs. G.R. Sapre and ors. **[1981 LAB. I.C. 221]** and in the case of Balkrishna Pen Pvt. Ltd. (Supra) and submitted that merely because clear 14 days notice was not given either for the commencement of a strike or lockout, it could not be said that the strike/lockout was illegal and on the contrary, if it is a case of lockout, the employer will be liable to pay wages for the days the notice fell short of the requirement of 14 days. In the instant case the court has observed that the notice of 11 days was given and it was short of three days. As per Mr. Bapat at the most the petitioner no.1-Company would be required to pay three

days wages to all the workmen and that would clear the deficiency of notice period of clear 14 days and, therefore, the lockout commenced on 28/12/1980. There can be no dispute on this proposition as it is a well settled legal position and, therefore, the lockout commenced from 28/12/1980 by the petitioners could not be termed as illegal on account of 11 days notice instead of 14 days before the lockout commenced. The requirement of 14 days notice under Section 24(2)(a) of the Act has been interpreted by this court in the above terms. It must also be noted that the complaint was presented to the Industrial Court after four years of commencement of the lockout.

6. Section 24(2)(a) of the Act defines the term "illegal lockout" and it means a lockout which is commenced or continued without giving to the employees, a notice of lockout in the prescribed form or within fourteen days of the giving of such notice. Rule 23 of the M.R.T.U. and P.U.L.P. Rules 1975 states that a notice of lockout under Clause (a) of Subsection (2) of Section 24 shall be in the form "J" and shall be sent by registered post. Whereas Rule 54 of the Labour Court (Practice and Procedure) Rules,

1975 reads as under:-

> "54. An employer desiring to commence a lockout shall give notice to the employees in the undertaking, in Form-J of the rules. If there is no recognised union of employees in the undertaking, the employer who desires to commence a lockout, the notice of the proposed lockout shall be affixed on usual notice Board in the language understood by majority of employees and also in English and also shall be given to every employee in the undertaking and also to any union of employees in the undertaking."

. The Industrial Court has accepted that notice of lockout was given on 17/12/1980, a copy of the same was displayed on the notice board on the same day with an intention to commence the lockout from 28/12/1980. The record further shows and it has been admitted by the complainant that the workmen were being represented by Engineering Workers Union (Mumbai Shramik Sangh) and the Secretary of the said Union had paid a visit to the factory on 26/11/1980. The oral

depositions of the complainant indicates that when the lockout was declared there were in all 22 workers in the factory. The letter addressed to the Union on 17/12/1980 further stated that the management had forwarded a copy of the lockout notice to the Union as soon as the notice of lockout was displayed on the notice board. The learned Member of the Industrial Court found that the said notice did not meet the requirements of form "J" in as much as though the name of the employer was mentioned, its address was not there and the material particulars were not mentioned in the form. Mr.Kulkarni the learned counsel for the respondent-complainant has supported this finding. However, the lockout notice sets out in details the reasons for the proposed lockout from 18/12/1980 and it gives the name of the employer. As per the Industrial Court the statement of reasons ought to have been separately annexed to the notice of lockout and the copies of the same ought to have been sent to the Investigating Officer, the Registrar - Industrial Court, the Judge - Labour Court, the Commissioner of Labour. Admittedly, none stepped in the witness box from the petitioners side to support that the lockout notice met all the requirements of Form "J". There is

also no evidence on record that a copy of the notice was sent to every workman as required under Rule 54, even the forwarding letter dated 17/12/1980 purportedly sent to the Union along with the copy of the lockout notice has not been proved. Even if it is assumed that the notice by and large met the requirements of Form "J", it did not meet the requirements of Rule 54 of the Labour Court (Practice and Procedure) Rules, 1975 and the requirement of Rule 54 must be followed, if regards be had to the language of Section 24(2)(a) which states that notice must be given to each employee. It was the specific averment in the complaint that the lockout commenced and continued from 28/12/1980 was without any lockout notice either to the Union or to the workmen and no notice was displayed on the notice board regarding the proposed lockout. It was, therefore, imperative for the petitioners to lead evidence to prove the requirements of Section 24(2)(a) of the Act which has not been done. Hence, the law laid down in the case of M/s. Savita Chemicals (Pvt.) Ltd. vs. Dyes & Chemicals Workers Union **[1999 (2) SCC 143]** goes against the petitioners, impliedly.

7. Mr. Bapat the learned counsel for the petitioners has also raised two preliminary issues regarding the maintainability of the complaint on two different grounds, namely, (a) the complaint was filed belatedly and there was no application for condonation of delay as is required when the complaint is filed beyond 90 days and (b) if the complaint was treated by the Industrial Court as an application under Section 25(2) of the Act, by following the law laid down by this court in Balkrishna Pen's case (Supra), it was necessary that the complaint was filed either by a recognized Union or any other Union and when it has been admitted that the complainants were being represented by the Engineering Workers Union, it was not permissible for the Industrial Court to entertain the complaint filed by the individual workman.

8. So far as the issue of delay is concerned, there is no doubt that the lockout had commenced on 28/12/1980 and it continued till the complaint was filed and, therefore, there was continuing cause of action. Mr.Bapat is right in his submissions that a separate application for condonation of delay was required to be filed along with the complaint and such

an application could have been allowed on the ground that there was a continuous cause of action but in the absence of such an application it was no permissible for the Industrial Court to condone the delay or entertain the complaint filed beyond 90 days. It appears, when the issues were framed by the Industrial Court, the petitioners though represented by an Advocate have given up this issue of delay. Similarly, the second issue regarding the maintainability of the complaint filed by individuals and having regards to the language of Section 25(2) of the Act was also not agitated before the Industrial Court. No doubt, in the case of Balkrishna Pen's case (Supra) as well as the Premier Automobile Ltd. vs. G.R. Sapre (Supra) the complaints were filed by the employer against the Union or by some or the other Union. The observations made by this court in Balkrishna Pen's case (Supra) do support the contentions of Mr.Bapat that the issue was required to be considered more so when the complaint was being treated as an application filed under Section 25(2) of the Act and if such an issue was taken up, perhaps there was a scope for the complainants to persuade the Union to join as the complainant as they were being

represented it. Having not done so and having given up such a preliminary issue, it would not be permissible now to take up the same issue and invite a finding that the complaint was not maintainable as it was not filed by the Union representing the complainants. Hence, the preliminary issues raised by Mr. Bapat do not in any way call for disturbing the impugned order.

9. In the premises the petition fails and the same is hereby dismissed. The declaration made by the Industrial Court that the lockout was illegal is hereby confirmed. No costs.

(B.H. Marlapalle,J.)